



November 29, 2001

Ms. Kimberley Mickelson
Attorney for the City of Friendswood
Olson & Olson
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2001-5534

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155448.

The City of Friendswood (the "city"), which you represent, received a request for "[a]ll correspondence/documents received by any city employee/representative from the company conducting the applicant search for Chief of Police." The city received a second request from the same requestor, which seeks "[a]ll correspondence/documents sent to any employee/representative of the company conducting the applicant search for Chief of Police." You claim that the submitted information is not information subject to the Public Information Act (the "Act") under section 552.002 of the Government Code. In the alternative, you claim that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comment).

Initially, we note that you have not submitted any information responsive to the second request for information. Thus, to the extent any information responsive to the second request exists, we assume it has been released. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

The Act applies to "public information," which is defined under section 552.002 as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002; *see also id.* § 552.021. You indicate that the city has hired an outside consulting firm to conduct much of the preliminary work with respect to the search for a new Police Chief. You explain that "[i]t is believed that all applicants received a letter similar to that which is attached as page 3." You then state that "[n]either the City nor the department collect, assemble, or maintain this information, nor does either own it or have a right of access to it." You do not, however, provide an explanation or authority for this conclusory assertion. You have provided this office with a copy of the Agreement for Services entered into between the city and the outside consulting firm. This agreement, however, does not contain any provision that addresses ownership, control, or access to the submitted information.

The Act does not ordinarily require a governmental body to obtain information that is not in its possession. Open Records Decision Nos. 445 (1986), 317 (1982). In some instances, however, the Act does apply to information collected or maintained by third party consultants or contractors of governmental bodies. *See, e.g.*, Open Records Decision No. 462 (1987). Where a third party has prepared information on behalf of a governmental body, the information is subject to the act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure. Open Records Decision Nos. 445 (1986), 437 (1986) (overruled by Open Records Decision No. 585 (1991) to the extent it suggests that a governmental body can waive its right of access to information gathered on behalf of a governmental body).

Here, it is apparent that the outside consulting firm sent the submitted letter to an applicant on behalf of the city, and thus was acting as an agent of the city. Accordingly, the submitted information is "public information" under section 552.002 of the Government Code.

We agree, however, that a portion of the submitted information must be withheld from disclosure under section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the peace officer has family members. Therefore, the department must withhold the information we have marked in the submitted document under section 552.117(2) of the Government Code. *See also* Open Records Decision No. 670 (2001) (providing that a governmental body may withhold information under section 552.117(2) without requesting a decision from this office).

To summarize, we conclude that the city must withhold the information we have marked under section 552.117(2). The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen A. Eckerle".

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 155448

Enc: Submitted documents

c: Mr. Jeff Branscome
308 Woodstream Circle
Friendswood, Texas 77546
(w/o enclosures)